



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 24, 2020

BY ECF

Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Daniel Hernandez*, S5 18 Cr. 834 (PAE)

Dear Judge Engelmayer:

The Government writes in response to defendant Daniel Hernandez's (the "defendant" or "Hernandez") March 22, 2020 submission requesting early release in light of the COVID-19 outbreak. (ECF No. 437.) For the reasons set forth below, the Government opposes the defendant's request. First, given the procedural posture of the defendant's request, the Government is unaware of any authority that would allow the Court to release the defendant, temporarily or otherwise. Second, although the defendant's medical condition makes him an at-risk individual with respect to the COVID-19 virus, the facility where the defendant is housed has been treating his condition and has a plan in place to separate and treat inmates suspected of contracting the virus.

I. Authority to Release the Defendant


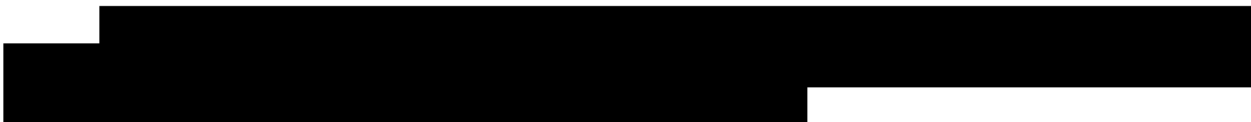
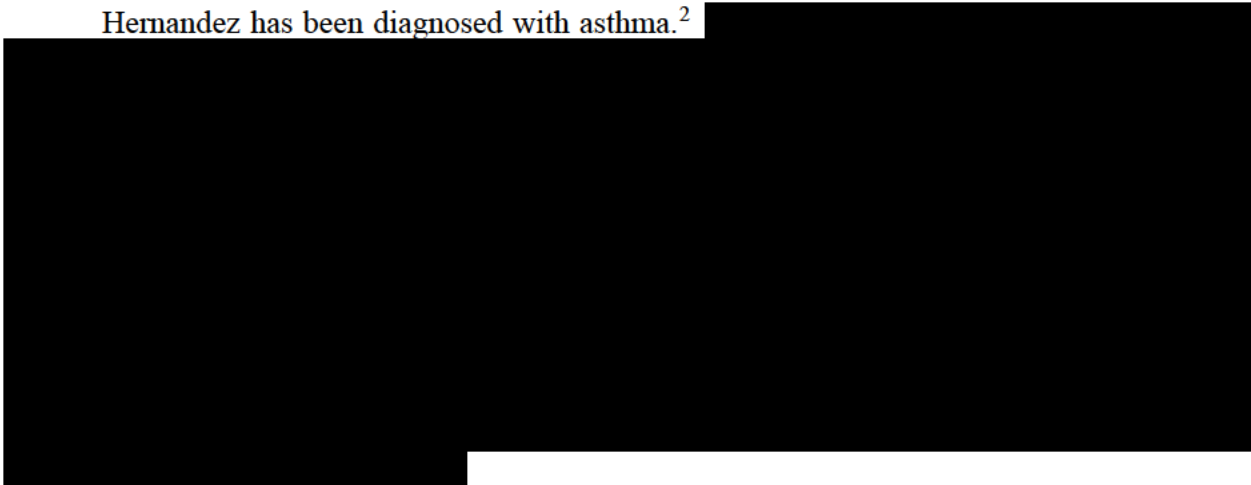
First, the Government is unaware of any authority that would permit the Court to order the temporary release of the defendant pending the result of the COVID-19 outbreak. Title 18, United States Code, Section 3582(b) provides that a judgment of conviction that includes a sentence of imprisonment constitutes a final judgment for all other purposes, with certain exceptions. Those exceptions include sentences (1) modified pursuant to Section 3582(c); (2) corrected pursuant to Rule 35 of the Federal Rules of Criminal Procedure; or (3) appealed or modified pursuant to Section 3742. The Court may modify a sentence pursuant to Section 3582(c) only "upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier" 18 U.S.C. § 3582(c)(1)(A).¹

¹ It does not appear that the defendant has sought relief from the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1), nor has he exhausted his administrative rights. It also does not appear that

Additionally, 18 U.S.C. § 3622 allows for the temporary release of a prisoner for very limited purposes; however, the statute provides that the determination for temporary release lies with the Bureau of Prisons, not the sentencing Court.

II. The Defendant's Medical Treatment

Hernandez has been diagnosed with asthma.²



the defendant would satisfy the factors justifying a modification of his sentence. *See* https://www.bop.gov/policy/progstat/5050_050_EN.pdf.

² The Government is redacting the following recitation of the defendant's contacts with medical personnel while incarcerated, and will file an unredacted version of this submission with the Court. However, should the Court determine that this filing should be filed in unredacted form, the Government will do so immediately. In addition, the facility provided the Government with medical records detailing the defendant's recent encounters with medical personnel at the facility. Given the sensitive nature of those records, the Government is filing those records under seal.

III. Conclusion

Accordingly, because the Government is unaware of any authority that would permit the Court to temporarily release the defendant pending the result of the COVID-19 outbreak, and because the facility has been managing the defendant's asthma condition, the Government opposes the defendant's request for early release.

Respectfully submitted,

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